

## SB 377 TO CLARIFY THE DEFINITION OF PREPAID LEGAL INSURANCE

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February 24, 2015

The purpose of SB 377 is to give consumers and small businesses greater access to legal advice and representation at an affordable price and to clarify what is excluded from prepaid legal insurance under Montana's Insurance Code.

Currently, companies that provide legal services or reimbursement for legal expenses and spread the cost of the services or reimbursement over a group of individuals are to be regulated as insurance companies selling prepaid legal insurance as defined in 33-1-215, MCA.

What is not prepaid legal insurance is also enumerated including attorney referral services and discount cards. Due to the evolution of attorney referral plans and the enhanced services and products they provide, we are seeking a clarification of those referral plans that are not insurance under the statute.

Since prepaid legal insurance was defined in our Code in 1999, legal referral plans have evolved to provide consumers, in addition to a simple referral, a variety of related products and services, such as downloadable forms; initial or brief attorney consultations; discounts off further attorney work that may be needed and on certain products and services. Plan members may pay a small periodic fee for membership and access to a network of attorneys and products. Attorneys accepting referrals from the plan may sometimes receive a small periodic fee to cover administrative costs associated with participation in the network. Plan members benefit from access to a network of attorneys and limited consultations at a reasonable cost; attorneys benefit by the opportunity to build their practice with valued clients.

Referral plans that provide access to attorneys but do not provide legal representation or reimbursement for legal expenses, and where all legal arrangements are directly between the client and the attorney are not intended to be within the scope of prepaid legal insurance. A plan that pays an administrative fee to an attorney for availability to accept referrals is not compensating the attorney for legal services. Those fees are negotiated directly between the member and the attorney to whom the member is referred. Unlike traditional insurance, the providers of the plans assume no risk of loss nor do they indemnify for, or make payments based on, legal services provided or legal expenses incurred--the hallmarks of insurance. The plan has no risk because the attorney-client relationship is strictly between the member and attorney. The member has simply paid for access. The attorney has no risk because the attorney may decline representation. And free initial consultations are common in the practice of law.

The requested amendment to 33-1-215 will remove doubt that these enhanced referral plans are insurance subject to regulation under the Insurance Code. The amendment does not affect the practice of law, which remains under the supervision of the Montana Supreme Court, or the prohibition against the unauthorized practice of law, which is regulated by the Department of Justice. The amendment will ensure continued consumer access to networks of participating attorneys to evaluate consumer legal needs and to efficiently form attorney-client relationships. Defining these relationships as insurance does not provide additional protection for consumers and increases costs or needlessly impedes access to these services for Montana citizens.

## **Support for Legal Plans:**

The **American Bar Association** supports consumer access to legal plans and formed the ABA Standing Committee on Group and Prepaid Legal Services. This Committee's sole purpose is to remove legal barriers to the growth of the legal plan industry and encourage state and local bar associations to foster lawyer participation in legal plans.<sup>1</sup>

The **National Association of Attorneys General** adopted a resolution supporting the concept of prepaid legal service plans because they:

1. Are important to maintaining the confidence in our justice system and the rule of law.
2. Efficiently and inexpensively provide preventative legal services to low and middle income Americans.
3. Ease the burden on overtaxed government programs.
4. Enhance productivity by allowing employees to focus on their jobs, not their legal troubles.<sup>2</sup>

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<sup>1</sup> See [http://www.americanbar.org/groups/group\\_prepaid\\_legal\\_services/policy.html](http://www.americanbar.org/groups/group_prepaid_legal_services/policy.html)

<sup>2</sup> <http://www.naag.org/assets/files/pdf/Resolution.PrepaidLegalServicesPlans.Adopted.pdf>